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Attorney for AMERICA'S SERVICING COMPANY

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:	§	CASE NO. 05-20071-FRM-7
	§	
DAVID NEAL MCKENZIE,	§	
Debtor	§	CHAPTER 7
	§	
AMERICA'S SERVICING COMPANY,	§	
Movant	§	HEARING DATE:____________
	§	
v.	§	TIME:______________________
	§	
DAVID NEAL MCKENZIE; and	§	
MARSHA G. MILLIGAN, Trustee	§	
Respondents	§	JUDGE FRANK R. MONROE

MOTION OF AMERICA'S SERVICING COMPANY
FOR RELIEF FROM STAY AND WAIVER OF THIRTY DAY REQUIREMENT
PURSUANT TO § 362(e)

NOTICE

THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS.

IF NO TIMELY RESPONSE IS FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.

A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

WAIVER OF THIRTY DAY REQUIREMENT

MOVANT DESIRES TO WAIVE THE REQUIREMENT OF A HEARING WITHIN THIRTY (30) DAYS UNDER §362(e) AND REQUESTS A HEARING AT THE NEXT AVAILABLE DATE.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Movant, AMERICA'S SERVICING COMPANY, by and through the undersigned attorney, and moves the Court as follows:

1. This Motion is brought pursuant to 11 U.S.C. Section 362(d) and in accordance with Rule 9014 of the Bankruptcy Rules.

2. On or about December 05, 2005, Debtor (hereinafter "Debtor") filed a petition for an order of relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C.

3. At the time of filing the Chapter 7 petition, Movant held a ARM Note executed on October 17, 2003, by DAVID NEAL MCKENZIE in the original amount of ONE HUNDRED TWENTY-SIX THOUSAND NINE HUNDRED DOLLARS AND ZERO CENTS ($126,900.00) with interest thereon at an adjustable rate as stated in the ARM Note. A true and correct copy of the ARM Note is attached hereto as Exhibit "A".

4. The indebtedness is secured by a Deed of Trust dated October 17, 2003 and executed by DAVID NEAL MCKENZIE on real estate with all improvements known as:

> LOT 21, BLOCK "R", WINDSOR PARK HILLS, SECTION THREE, AN ADDITION IN AND TO THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 16, PAGE 65, PLAT RECORDS, TRAVIS COUNTY, TEXAS.

A true and correct copy of the Deed of Trust is attached hereto as Exhibit "B".

5. Prior to the filing of the petition, Debtor was indebted to Movant according to the terms and conditions of the ARM Note and Deed of Trust. Debtor has failed to maintain current the payments due under the note and is presently in arrears for 9 payments through and including the December 01, 2005 payment. Up to and including the date of the filing of the petition, the indebtedness was as follows:

Unpaid principal - $124,877.81

Movant has no knowledge of any other secured claims against the property. Creditor believes that on the date Debtor filed the petition, the collateral securing the indebtedness owed to Movant equaled or exceeded in value the amount of the debt. Movant would assert that in the absence of a valuation hearing, Movant is secured at least to the extent of $139,903.34.

6. Further cause may exist to terminate the automatic stay if the Debtor fails to provide proof of adequate insurance and payment of applicable taxes by Debtor as required by the ARM Note and Deed of Trust. Movant hereby demands proof of insurance and payment of applicable taxes by Debtor. Movant reserves the right to further assert that Debtor has failed to pay taxes or insurance based on the response of Debtor.

7. In accordance with the terms of the ARM Note and Deed of Trust, Movant would allege that it is entitled to reasonable post-petition attorneys fees, including, but not limited to, fees, if any, for the preparation and filing of a proof of claim and fees and costs for the filing of this Motion for Relief from Stay.

8. By reason of the foregoing, Movant requests the Court to terminate the stay so Movant may proceed to foreclose in accordance with its ARM Note and Deed of Trust.

9. Debtor has failed to provide adequate protection to Movant which constitutes cause to terminate the automatic stay of 11 U.S.C. §362(a).

10. The outstanding indebtedness to Movant is $124,877.81 principal plus accrued interest, late charges, attorneys fees and costs as provided in the ARM Note and Deed of Trust.

11. Movant reserves the right to assert an 11 U.S.C. § 362(d)(2) Cause of Action, if appropriate, at the hearing on Movant's Motion for Relief.

WHEREFORE, Movant prays that this Court enter an order, after notice and hearing, terminating the automatic stay as to Movant; alternatively, Movant be afforded adequate protection including, but not limited to, having all post-petition payments brought current and being reimbursed for it's reasonable post-petition attorneys fees and expenses and that Movant be granted such other and further relief as is just.

Respectfully submitted,

BARRETT BURKE WILSON
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BY: /s/ JEFF FLEMING
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ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2005, a true and correct copy of the foregoing Motion for Relief from Stay was served via electronic means as listed on the Court's ECF noticing system or by regular first class mail to the parties on the attached list.

Respectfully submitted,

BARRETT BURKE WILSON
CASTLE DAFFIN & FRAPPIER, L.L.P.

/s/ JEFF FLEMING 12/15/2005

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